In the District Court of the United States for the Eastern District of Pennsylvania

JUNE SESSIONS 1935

No. 6665

UNITED STATES OF AMERICA

v.

THE ACME CAN COMPANY

STATEMENT OF JURISDICTION

(Filed April 14, 1936)

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the UNITED STATES OF AMERICA submits herewith its statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause:

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by Title 18, Sec. 682, of the United States Code, otherwise known as the "Criminal Appeals Act", and by Section 345, Title 28, of the United States Code.

B. The Statute of the United States, the construction of which is involved herein, is the Stand-

ard Container Act of May 21, 1928, 45 Stat. 685, Chap. 664, (15 U. S. C. A., Secs. 257–257 (i)), the pertinent parts of which are as follows:

SEC. 1. That the standard hampers and round stave baskets for fruits and vegetables shall be of the following capacities: One-eighth bushel, one-fourth bushel, one-half bushel, one bushel, one-and-one-fourth bushels, one-and-one-half bushels, and two bushels, which, respectively, shall be of the cubic content set forth in this section. For the purposes of this Act a bushel, standard dry measure, has a capacity of two thousand one hundred and fifty and forty-two one-hundredths cubic inches.

(a) The standard one-eighth bushel hamper or round stave basket shall contain two hundred and sixty-eight and eight-tenths cubic inches.

* * * * *

SEC. 5. That it shall be unlawful to manufacture for sale or shipment, to offer for sale, to sell, to offer for shipment, or to ship, hampers, round stave baskets, or splint baskets for fruits or vegetables, either filled or unfilled, or parts of such hampers, round stave baskets, or splint baskets that do not comply with this Act: *Provided,* That this Act shall not apply to Climax baskets, berry boxes, and till baskets which comply with the provisions of the Act approved August 31, 1916, entitled "An Act to fix standards for Climax baskets for grapes and other fruits

and vegetables, and to fix standards for baskets and other containers for small fruits, berries, and vegetables, and for other purposes" (Thirty-ninth United States Statutes At Large, page 673, and the regulations thereunder). Any individual, partnership, association, or corporation that violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500.

C. The judgment of the District Court sought to be reviewed was entered on April 14, 1936, and an application for appeal was filed on April 14, 1936, and is presented to the District Court herewith, to wit: on this, the 14th day of April 1936.

The Indictment in this case is in four separate counts, each of which counts is based upon Sections 1 and 5 of the Standard Container Act of 1928 (United States Code, Title 15, Secs. 257 and 257 (d)) and charges in substance that the defendant, THE ACME CAN COMPANY, on the days named, did knowingly, wilfully, and unlawfully manufacture and sell for fruits and vegetables, certain two-quart metal hampers which did not comply with the provisions of the Standard Container Act of May 21, 1928, in that they were not of any standard size authorized by the Act for hampers for fruits and vegetables and were not within any tolerances established by the Secretary of Agriculture pursuant to the Act of hampers so standardized. A demurrer to the Indictment was filed by the de-

fendant, THE ACME CAN COMPANY, and at the hearing thereof the Court construed the provisions of the Statute as being inapplicable to the sale of two-quart size hampers for fruits and vegetables. In its written opinion, the court held that the Act makes neither provision nor penalty for using a container of less than one-eighth (four quarts) of a bushel. The court further held that the constitutionality of the Act was not involved and that the sustaining of the demurrer was not based on the intra-state character of the business.

The following decisions are believed to sustain the jurisdiction of the Supreme Court:

United States v. *Heinze,* 218 U. S. 532.
United States v. *Hastings,* 296 U. S. 188.
United States v. *Bitty,* 208 U. S. 393, 399.
United States v. *Keitel,* 211 U. S. 370.

Respectfully submitted.

(Sgd.) CHARLES D. MCAVOY,
United States Attorney.

In the District Court of the United States for the Eastern District of Pennsylvania

JUNE SESSIONS, 1935

No. 6665

UNITED STATES OF AMERICA

v.

THE ACME CAN COMPANY

STIPULATION

(Filed May 4, 1936)

AND NOW, to wit: this 28th day of April 1936, it is hereby STIPULATED and AGREED by and between CHARLES D. MCAVOY, United States Attorney for the Eastern District of Pennsylvania, counsel for the plaintiff, and STANLEY B. COOPER, Esquire, counsel for the defendant above named, as follows:

1. That the last paragraph on page two of the "Statement of Jurisdiction" be amended Nunc Pro Tunc to read as follows:

> The Indictment in this case is in two separate counts, each of which counts is based upon Sections 1 and 5 of the Standard Container Act of 1928 (United States Code Title 15, Secs. 257 and 257 (d)), and charges in substance that the defendant, THE ACME CAN COMPANY, on the days named, did knowingly, wilfully, and unlawfully

manufacture and sell for fruits and vegetables, certain two-quart metal hampers which did not comply with the provisions of the Standard Container Act of May 21, 1928, in that they were not of any standard size authorized by the Act for hampers for fruits and vegetables and were not within any tolerances established by the Secretary of Agriculture pursuant to the Act for hampers so standardized. A Demurrer to the Indictment was filed by the defendant, THE ACME CAN COMPANY, and at the hearing thereof the Court construed the provisions of the Statute as being inapplicable to the manufacture and sale of two-quart size hampers for fruits and vegetables. In its written opinion, the court held that the Act makes neither provision nor penalty for using a container of less than one-eighth (four quarts) of a bushel. The Court further held that the constitutionality of the Act was not involved and that the sustaining of the demurrer was not based on the intrastate character of the business.

2. That the second paragraph of the Assignment of Errors be Amended Nunc Pro Tunc to read as follows:

That the Court committed material error against plaintiff in sustaining said Demurrer in holding that the provisions of the Standard Container Act of May 21, 1928, are inapplicable to the manufacture and sale of two-quart size metal hampers for fruits and vegetables.

This Stipulation is entered into without prejudice to the right of the defendant above named to question the correctness of the Statement of Jurisdiction as amended, or to object to the time within which the appeal was taken.

(Sgd.) CHARLES D. MCAVOY,
United States Attorney.

(Sgd.) STANLEY B. COOPER,
Attorney for Defendant.

Approved by the Court:

(Sgd.) WELSH, *J.*

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